

§ 8.—*Expenses of Witnesses.*

Under section 544 the reasonable expenses of a complainant or witness may be defrayed by the Court subject to the local rules which the Local Government is empowered to make. These exist in all provinces and must be consulted.

The Police manage this in Police cases, and the local rules give scales of rates according to the class and circumstances of the witness.

In petty cases, where there is no public interest involved, only a dispute between the two parties, the Magistrate would not as a rule pay anything. In summons cases the parties usually produce their own witnesses, and when they apply for summons, the Magistrate will not grant expenses from the public funds, except it appears to him that the prosecution was desirable in the interests of public justice.

All forest prosecutions would of course be in the interests of public justice; and the expenses would be paid by Government.

SECTION VII.—THE CHARGE IN WARRANT CASES (*with special reference to Forest cases*), AND ITS INCIDENTS.

§ 1.—*The Form and Object of the Charge.*

The reason why I devote a separate though brief section to the subject of the "charge" is that though the form and contents of it are more a matter for the Magistrate than for the forest officer to study, still there are certain questions connected with charges, such as the trial of several offences on one charge, and the trial of several persons having different degrees of connection with the transaction that forms the subject of the trial, at one time, which it may be desirable for the forest officer to understand.

The "charge" is a formal sheet attached to the proceedings. Its object is to inform the accused (who should be clearly described by his name, father's name, and so forth) that he is charged with a definite act committed on or about a certain date, at a certain place, which act constitutes an offence coming under such and such section of the Penal Code or otherwise, and within the juris-

diction of, such and such a Court. The charge sheet also directs that the prisoner be tried on this charge.

2.—*Description of the Offence.*

The charge need only specify the offence by the name which it bears in the Code or other law, but if the law does not give the offence to specify name (as "lurking house trespass"—"culpable homicide," &c.), then so much of the definition or description of the offence, as will clearly inform the accused what he is being tried for, must be entered. It is not necessary to state in the charge the absence of *exceptions* and so forth. The mere mention of the offence charged implies every legal condition required by the law to constitute the offence. It is ordinarily for the prisoner in his defence to show the existence of exceptions, as that he was out of his mind: but there are cases in which the prosecution has to prove the absence of certain conditions: that however has nothing to do, with the contents of the charge.

A charge may be amended at any stage of the proceedings. (Section 227, but see sections 228 and 231.)

§ 3.—*Charge of several Offences.*

When a man has committed a number of offences one after the other, he may be tried for three of them at one time, provided that they happened within a year of each other. This frequently happens, when a professional thief is caught and he has been on a thieving tour, in which he may have successively robbed half a dozen houses. (Section 234.)

§ 4.—*Several Offences in one Transaction.*

It often happens that a single set of facts, connected and forming one transaction, nevertheless gives rise to several offences. Such offences may all be entered as "counts" on the charge and tried at one time. For example, A with six others, commits the offence of rioting, and in so doing causes grievous hurt, and also assaults a public servant, who in the course of his duty endeavours to suppress the riot. Here there is one transaction, but three offences, under sections 147, 325 and 152 (Indian Penal Code), have

been committed, and all may be entered in one charge sheet and tried at the same time.

It may also happen that a single act or transaction falls within two separate definitions of offences: here the charges may specify each of the offences committed, but the accused can only receive one punishment, which may be the *maximum* that could be awarded for either; and so if several acts combined form one offence, and one or more of the separate acts also are in themselves offences. For example, a person may break into a house (itself an offence), may commit adultery with a woman in the house (second offence), and afterwards may carry off some of her jewellery (third offence). Here he may be tried for all the separate offences, but gets only one punishment, which may be the *maximum* that can be inflicted for either. (See section 71 of Indian Penal Code as amended by Act VIII of 1882.) In connection with offences made up of several acts, the first clause of section 71, Indian Penal Code, must be remembered. Supposing a man commits the offence of causing hurt or using criminal force by striking 50 blows with a cane, here each blow is in itself an offence, but the offender could not get 50 punishments, one for each blow, but only one punishment for the whole beating.

§ 5.—*Charge in case of doubt which Offence is established.*

Lastly it may appear that a single act or set of acts is of such a nature that it is doubtful which of several offences the facts proved will constitute, though they will certainly constitute one or other. Here the charge may be framed in the alternative that the accused did so and so, and thereby committed either this offence or that. A person, for example, may be accused of acts which may amount either to theft, to receiving stolen property, or criminal breach of trust, or cheating. (Section 236.) In such cases, if only one offence is actually charged and the evidence shows a different offence to be appropriate to the facts proved, the accused may be convicted of the offence proved * (section 237); and so where acts

A person charged with theft is often found guilty of criminal misappropriation for example.